

- (C) Claims 39-41 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter.
- (D) Claims 46-48 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

On Oct. 15, 2009, applicant filed a fully responsive Response After Final which sought to amend claim 39, amend the specification, and add Figure 5. These amendments are supported by applicant's disclosure, e.g., at least by paragraphs [0005], [0006], and [0018], as published, without adding new matter. Applicant's Response After Final also traversed the above-noted objections and rejections.

On Dec. 2, 2009, the Office mailed an Advisory Action which indicated that the Response After Final was not entered. The Advisory Action also indicated that "[n]ewly proposed or amended claim(s) 39-45 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claims."

Applicant now respectfully requests that the Examiner enter and consider the Response After Final. Applicant also respectfully provides the following remarks to address the issues raised by the Advisory Action.

As an introductory matter, the undersigned attorney thanks Examiner Bibbins for her courtesies during the Examiner Interview of Dec. 22, 2009. During the Examiner Interview, the parties discussed the 35 U.S.C. § 101 rejection, the 35 U.S.C. § 112 rejection and the remarks of the Advisory Action and Response After Final.

With respect to the 35 U.S.C. § 101 rejection, the Examiner indicated that the rejection would most likely be overcome following entry of the Response After Final. Accordingly, claims 39-45 would most likely be allowed.

With respect to the 35 U.S.C. § 112 rejection, the undersigned suggested that one of ordinary skill in the art would know that the applicant was in possession of the "processor-readable medium" of claims 46-48 from applicant's disclosure. The Examiner indicated that, as referred to by the Advisory Action, claims 16-48 are rejected

because the processors and processor-readable media were "not disclosed or described in the original specification" and were not "inherently performed by a processor-readable medium[.]" The Examiner also indicated that irrespective of what was known in the art, claims 46-48 would remain rejected because applicant's disclosure does not expressly describe processors/processor-readable media.

Applicant respectfully submits that the Office is applying the incorrect legal standard in refusing to withdraw this rejection. As noted by the MPEP, the correct legal standard for § 112 written description is whether the disclosure of the application "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." (MPEP § 2163.02, emphasis added.) Further, "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." (Id., emphasis added.)

Under the correct legal standard, the processor-readable storage medium of claims 46-48 is supported by applicants' disclosure because "one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention[.]" e.g., the processor-readable storage medium of the claimed type, from applicant's disclosure. (See, MPEP § 2163, emphasis added.)

Because an incorrect legal standard was applied in rejecting claims 46-48 under 35 U.S.C. § 112, applicant respectfully requests that this rejection be withdrawn and claims 46-48 allowed.

In view of the foregoing, the pending claims comply with the requirements of 35 U.S.C. §§ 101 and 112. Applicant does not concede any rejection not specifically responded to above, and reserves its rights to respond to any such rejections later. Applicant accordingly requests reconsideration of the application and a mailing of a Notice of Allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Davin Chin at (206) 359-8000.

Respectfully submitted,

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